

USDS SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: 4-28-09
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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TEOFILO REYES,

Petitioner,

07 Civ. 1044 (PKC) (THK)

-against-

ORDER ADOPTING
REPORT AND
RECOMMENDATION

SUPERINTENDENT R.J. CUNNINGHAM,

Respondent.
-----x

P. KEVIN CASTEL, District Judge:

Plaintiff filed a pro se petition for habeas corpus pursuant to 28 U.S.C. § 2254 on February 14, 2007. He filed an amended petition on April 12, 2007. Petitioner claims that he was denied the effective assistance of counsel, in violation of the Sixth Amendment, and that the prosecutor's summation was prejudicial, in violation of the Due Process Clause. On August 16, 2007, I referred the petition to Magistrate Judge Theodore H. Katz for a report and recommendation. (Doc. #12.) On August 26, 2008, Magistrate Judge Katz issued a thorough 47-page Report and Recommendation ("R&R") recommending that the petition be denied in its entirety. (Doc. #13.) Magistrate Judge Katz recommended that petitioner's ineffective assistance of counsel claims be rejected because petitioner failed to show that his counsel's performance was objectively unreasonable or that he had been prejudiced by it. Magistrate Judge Katz recommended that petitioner's prosecutorial misconduct claim be rejected because it is procedurally barred.

The R&R advised the parties that they had ten days from service of the R&R to file any objections, and warned that failure to timely file such objections would result in waiver of any right to object. As of the date of this Order, no objections have been filed and no request for an extension of time to object has been made. The R&R expressly called petitioner's

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attention to Rule 72(b), Fed.R.Civ.P., and 28 U.S.C. § 636(b)(1). Plaintiff received clear notice of the consequences of the failure to object and has waived the right to object to the R&R or obtain appellate review. See Frank v. Johnson, 968 F.2d 298, 300 (2d Cir. 1992). No circumstances are presented which would cause this Court to depart from that rule in the interest of justice. Id.

The R&R is adopted in its entirety and the petition is DENIED. The Clerk shall enter judgment for respondent.

Petitioner has not made a substantial showing of the denial of a constitutional right and, accordingly, a certificate of appealability will not issue. 28 U.S.C. § 2253. The Court certifies that any appeal from this order would not be taken in good faith. 28 U.S.C. § 1915(a)(3).

SO ORDERED.

A handwritten signature in black ink, appearing to read 'P. Kevin Castel', is written over a horizontal line.

P. Kevin Castel
United States District Judge

Dated: New York, New York
April 27, 2009